

**Mr. SPEAKER.**—If it is a point of order I will answer it. Even though the Hon'ble Minister is prepared to give out information, it is within my discretion to allow him to do so or not. If I feel that the Ministers are not wise in furnishing the names of persons who are not present here, I must prevent them from doing so.

**Sri H. M. CHANNABASAPPA.**—Sir, I should like to submit that it is a question of privilege. Hon'ble Members are entitled to know the particulars of cases. This question involves Government money and therefore I should like to submit that it is the privilege of the members of this House to know who are all the persons that owe money to the Government.

**Mr. SPEAKER.**—The members are entitled to know the number of persons who are defaulters. But, the members are not entitled to know the names of defaulters who are not present in this House. If they feel they are entitled to know, they can approach the Minister concerned and get the list."

There was a similar situation in the Lok Sabha. It is in the Proceedings dated 11th April (Tuesday) 1961 where the question of individual names was considered :

"So far as the constitutional point is concerned, as to whether the House has powers to discuss it or not, presumably I should not question that. The House is sovereign and it can always discuss anything that it likes. Therefore, my advice even now, after hearing all the Members, would be that names should not be mentioned."

## CONSIDERATION OF BUILDING TAX BILL

### Member's objection.

**Sri G. V. GOWDA (Palya).**—In fact, I wanted to go through the Debates of the Constituent Assembly in respect of Article 246. It is not possible to get it. So far as that article is concerned, there is no debate. In order to know the intention of the constitution makers, it would have been helpful if those debates were made available.

If a little time is given to me I will try my best to look into those debates. As I submitted yesterday, when there is a conflict between a State that and a Concurrent List, it has been held that if it is a matter, substantially the same, concurrent list prevails. Likewise, if you extend the same theory to this case also, whether one enactment is adopted in respect of one entry, can the State Legislature again enact a law in respect of the same entry?

**Mr. SPEAKER.**—Does that analogy stand anywhere?

**†Sri G. V. GOWDA.**—The words "in respect of" have got to be understood clearly. The words are found even in the 1935 Act and the Federal Court observes.

"In view of the large number of items in the Legislative lists, it is almost impossible to prevent a certain amount of overlapping. Absolutely sharp and distinct lines of demarcation are not always possible.....To avoid such difficulties Parliament has thought fit to use the expression 'with respect to' which obviously means that looking at the legislation as a whole, it must substantially be with respect to matters in one list or the other. A remote connection is not enough.

On the other hand, the expression extends the legislative power to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in that topic or category of legislation. In short, thus, the expression invokes the principle of 'pith and substance' in the matter of interpreting the Legislative Lists. It is the nature and character of the legislation and not its ultimate economic or other consequences that determines whether it is with respect to one subject matter or another."

My point is, that in any of the subject-matters enumerated in the List the Parliament or State Legislature is competent to make laws in any of the matters enumerated in

respect of List II. That means that once the State Legislature has adopted a law in respect of a matter that is found in the List II, are we not entitled to ask that under the existing power vested in Article 246, is it open to us again to make that particular entry effected by our seeking to make a new law? My point is whether the same entry can be effected more than once. I presume that the intention of the Constitution makers would not have been that these entries should have been made more than once.

**Mr. SPEAKER.**—Now what the hon. member has read relates to the competence of State Legislature to make laws in regard to concurrent subjects.

**Sri G. V. GOWDA.**—If you could extend the theory that the State Legislature is entitled to enact laws in respect of one entry more than once, we are as well entitled to make laws affecting an entry in the concurrent list in as much as the State is empowered to make laws on entries found in the concurrent list. When it overlaps, then only the other thing should prevail. When once a matter has been affected by a law made by the Centre so far as the concurrent list is concerned, the State is not empowered to adopt the State law. Naturally, it debars the State from making law affecting the subject matter in the entry more than once. If you extend that theory, it holds good even in this case. I do not find positive case to support my view. Otherwise we may go on making laws affecting the same subject matter in the State list half a dozen times. Is it within our competence? It could not have been the intention to give power to make laws on a subject-matter more than once.

**Mr. SPEAKER.**—He wants to import a limitation upon the powers of the Legislature by saying that there are no certain provisions to that effect.

**Sri G. V. GOWDA.**—We are empowered to make laws ancillary or subsidiary which may not be of the same substantial nature. It should not be in substantial form.

**Sri ANNA RAO GANAMUKHI** (Afzalpur).—Rule 311 of our Rules of Procedure says that a point of order shall relate to the interpretation or enforcement of the rules or such articles of the Constitution as regulate the business of the Assembly and nothing more than that. If we look into the Constitution, article 188 onwards refers to business of the Legislature. Article 246 refers to distribution of legislative powers. Therefore, I doubt whether the Speaker can give any ruling about a question which does not lie within his power because a ruling should relate only to such articles of the Constitution as regulate the business of the Assembly. A limitation has been imposed on powers of the Speaker and I do not know, Sir, whether this House can discuss this matter or not. That is a different thing. But whether a Speaker can give a ruling or not is very doubtful.

**Sri G. V. GOWDA.**—Article 246 regulates the business of the House in the sense that this House derives authority under article 246 to enact law. We are convinced that this House is not competent to make legislation in respect of a matter which is already affected. It is in your discretion to say that this House is not competent.

**Mr. SPEAKER.**—Sri Anna Rao says that I have no discretion, and that I have not even the power.

**Sri G. V. GOWDA.**—Supposing I am trying to introduce a Bill affecting a matter found in the Union List. Can you admit it? You have got the power to admit or reject. Suppose the State Government brings legislation pertaining to a subject matter exclusively within the purview of the Parliament. Is it possible for the Speaker to entertain it? The Speaker has got the absolute power in deciding this matter.

**Mr. SPEAKER.**—Now, I wanted to know from Sri G. V. Gowda whether there is any authority either by of any precedent or ruling or judgment of the High Court or any constitutional authority. He seems to have in his mind some books which are not available

(MR. SPEAKER)

here, I do not know exactly what reference he has got in his mind and what citation gives him the authority.

Sri G. V. GOWDA.—I want the proceedings of the Constituent Assembly.

### Chair's Ruling

Mr. SPEAKER.—He wanted to know not anything precise in his mind. Whenever a proposition of law is stated in a Text book, reference is given at the bottom for which it says the authority is this. He wants to know by perusing the whole debate what the intention of the framers of the Constitution was, what the intention of the Constituent Assembly was. Anyhow he wanted to know that. I will refer to article 367. It says: "Unless the context otherwise requires, the General Clauses Act, 1897, shall subject to any adaptations and modifications that may be made therein under article 372, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India." The Mysore General Clauses Act, Section 14 says: "Whereby any Act made after the commencement of this Act any power is conferred, then that power may be exercised from time to time as occasion requires." So, it specifically shows, that functioning under any power that is vested in the Legislature, it can function more than once. I believe the Hon'ble Member might also be aware when we discussed on the last occasion the amendment to the High Court of Mysore Judicature Act, it was numbered as Second and the old Act was there. I am sure, if my friend finds out, he will find more than one Act under one subject because it depends upon circumstances. That is why if there is incompetence on the part of the Legislature, then neither one nor the other can be enacted at all. With regard to the question of exhaustion of powers, he has inclined to

the view that the powers get exhausted. I am not aware of any case or any ruling to the effect that once an Act is passed, that right is wiped out so far as the State is concerned. That is not a position which I can accept. Ultimately Sri G. V. Gowda said that that is a very complicated question and illustrated it by saying supposing an Act referring to the exclusive powers of the Central Government is brought before the Legislature, whether I would permit it. It is a purely hypothetical question. That is no comparison here. He mentioned it for the purpose of saying that I have got a right to say that patently *ultra vires* things should not be permitted so that the time of the House may be saved. Under Rule 272(2), the Speaker may disallow any motion or part of a motion on the ground that it relates to a matter which is not primarily the concern of the State Government. So with regard to the point he has raised, there is a specific provision under the rules. But it is a controversial matter which has been brought before the House and Sri Gowda will admit that there something to be considered. As the learned Member Sri G. V. Gowda has argued, the learned Member Sri Anna Rao holds a contrary and diametrically opposite opinion. Therefore I will not take the responsibility of deciding it. Then again I must inform the House for future guidance that whenever constitutional matters, — *ultra vires* or *intra vires*—are raised, it is not for the Speaker to decide, in fact it is for the House to decide. It has always been said that whenever there is a doubt, it should best be left to the courts to decide because any decision that is taken here will not be binding upon any party. They can go to a court and ask the judge to adjudicate whether it is *ultra vires* or *intra vires*. The practice has always been for the Speaker not to give a ruling whether it is *ultra vires* or *intra vires* but it is for the House to decide whether they can legislate or not and leave it to the court to decide whether it is *intra vires* or *ultra vires*. In the light of what I said, there is nothing more to do been so far as Sri Venkatai Gowda's